

ORIGINAL

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FILED

10 SEP 14 PM 3:10

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MPB
DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SCANTIBODIES LABORATORY, INC., a
12 California corporation,

13 Plaintiff,

14 v.

15 PALLAYPACK, INC., a Canadian
16 corporation,

17 Defendant.

Case No. **10 CV 1908 MMA RBB**

**COMPLAINT FOR (1) BREACH OF
CONTRACT; (2) NEGLIGENT
MISREPRESENTATION; (3) UNJUST
ENRICHMENT; AND (4) UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

18 Plaintiff Scantibodies Laboratory, Inc. hereby sues Defendant PallayPack, Inc., and alleges as
19 follows:

JURISDICTION AND VENUE

20 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
21 1332, as there is complete diversity between the Plaintiff and Defendant and the amount in
22 controversy exceeds the sum of \$75,000.

23 2. Plaintiff is informed and believes, and based thereon alleges, that venue is proper in
24 this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to
25 the claims asserted herein occurred within this judicial district.

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GENERAL ALLEGATIONS

3. Plaintiff Scantibodies Laboratory, Inc. ("Scantibodies") is a corporation organized and existing under the laws of the State of California, with its principal place of business in Santee, California. Scantibodies manufacturers medical tests and kits that screen for various types of disease, illness and other health related conditions, and makes critical components of medical tests and kits manufactured by other companies. Scantibodies manufactures over 1,500 products and components.

4. Scantibodies is informed and believes, and based thereon alleges, that PallayPack, Inc. ("PallayPack") is a corporation organized and existing under the laws of Canada, with its principal place of business in Kirkland (Montreal), Quebec, Canada. Scantibodies is informed and believes, and based thereon alleges, that PallayPack manufactures, among other things, products for vial, syringe and ampoule processing, and liquid filling and capping systems.

5. In or about early 2008, Scantibodies solicited and received a proposal from PallayPack for a high speed, filling, capping, and stoppering machine that Scantibodies intended to use to manufacture medical test kits. On or about July 22, 2008, Scantibodies issued Purchase Order No. 049826-00 to PallayPack, for a Rota Vial Filling and Capping Machine Model FLR100TS (hereinafter, "Filling and Capping Machine"). On August 18, 2008, Scantibodies issued Revised Purchase Order No. 049826-01 to PallayPack (hereinafter, "Purchase Order"). The Purchase Order contained over 15 pages of precise specifications and tolerances for various aspects of the Filling and Capping Machine that were necessary in order that the Filling and Capping Machine perform accurately and fulfill its intended purpose. The Purchase Order stated as a necessary term and condition: "Acceptance of this purchase order . . . will constitute an agreement to all of its specifications as to terms, deliver, prices, and [Scantibodies] product specifications." The total purchase price for the Filling and Capping Machine was \$685,381.86. Scantibodies made an initial down payment of \$190,826.00.

6. Scantibodies is informed and believes, and based thereon alleges, that PallayPack made arrangements to manufacture the Filling and Capping Machine at ROTA Verpackungstechnik GmbH & Co. KG, a facility in Germany. The Purchase Order originally specified a delivery date of July 3,

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1 2009. PallayPack could not meet that date, and at PallayPack's request Scantibodies agreed to extend
2 it to a date in September 2009.

3 7. Pursuant to the Purchase Order, PallayPack promised a Factory Acceptance Testing
4 date by July 3, 2009. Scantibodies SLI personnel flew to Germany in July 2009 to confirm the status
5 of the Filling and Capping Machine and determine probability of completion by the revised delivery
6 date. The Filling and Capping Machine was incomplete and not ready to be tested.

7 8. Scantibodies made a return trip to Germany in October 2009, based on PallayPack's
8 assurances that the Filling and Capping Machine was complete and that it met the specifications stated
9 in the Purchase Order. Inspection and testing revealed that the Filling and Capping Machine failed to
10 meet numerous specifications and its performance was unacceptable.

11 9. PallayPack continued to assure Scantibodies that it could perform additional work on
12 the Filling and Capping Machine so that it would meet the required specifications. In January 2010,
13 additional testing revealed that the Filling and Capping Machine still failed the specifications stated in
14 the Purchase Order and all of the practical specifications.

15 10. One year has passed since the amended delivery date. PallayPack failed to deliver a
16 Filling and Capping Machine that meets the specifications set out in the Purchase Order.

17 11. On or about May 3, 2010, Scantibodies notified PallayPack of its election to cancel and
18 avoid the Purchase Order.

19 **FIRST CLAIM FOR RELIEF**

20 **(Breach of Contract)**

21 12. Scantibodies realleges and incorporates by reference the allegations contained in
22 paragraphs 1 through 11 above, as though fully set forth herein.

23 13. On or about July 22, 2008, issued Purchase Order No. 049826-00 to PallayPack, for a
24 Rota Vial Filling and Capping Machine Model FLR100TS, and on August 18, 2008, Scantibodies
25 issued Revised Purchase Order No. 049826-01 to PallayPack. The Purchase Order contained precise
26 specifications and tolerances for various aspects of the Filling and Capping Machine. The total
27 purchase price was \$685,381.86. Scantibodies made an initial down payment of \$190,826.00.

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14. Scantibodies performed all conditions, covenants and promises required on its part to be performed in accordance with the terms and conditions of the Purchase Order. Any other conditions have been waived and/or excused.

15. Other than alleged, at no time prior to Scantibodies' performance under the Purchase Order did PallayPack ever disclose to Scantibodies any reason why it should delay performance and/or not perform pursuant to the agreement. Such information was material to Scantibodies' performance under the agreement.

16. Scantibodies was unaware of any reason why it should not perform under the Purchase Order.

17. Scantibodies was induced to act by PallayPack's actions and omissions and relied upon such actions and omissions.

18. PallayPack breached the Purchase Order by failing to deliver a Filling and Capping Machine that met the specifications stated in the Purchase Order. PallayPack's breach was fundamental in that it resulted in such detriment to Scantibodies that Scantibodies was substantially deprived of what it was promised by PallayPack in the Purchase Order.

19. As a direct and proximate result of PallayPack's material breaches of the Purchase Order , Scantibodies has suffered damages in an amount to be proven at the time of trial and believed to be in excess of \$240,000.00, which amount consists of Scantibodies' down payment, late penalties specified in the Purchase Order and consequential damages.

SECOND CLAIM FOR RELIEF

(Negligent Misrepresentation)

20. Scantibodies realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above, as though fully set forth herein.

21. In or about 2008, PallayPack represented to Scantibodies that it had the ability, machinery and expertise to manufacture the Filling and Capping Machine identified in the Purchase Order, to meet the specifications identified therein, and to timely deliver a conforming and acceptable product.

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22. Scantibodies is informed and believes, and based thereon alleges, that the representations of PallayPack described above were made without any reasonable basis for believing them to be true.

23. Scantibodies is informed and believes, and based thereon alleges, that PallayPack knew or should have known that such material representations were untrue.

24. Scantibodies is informed and believes, and based thereon alleges, PallayPack's misrepresentations were made for the purpose of inducing Scantibodies to issue the Purchase Order and enter into an agreement with PallayPack for the Filling and Capping Machine.

25. Scantibodies was unaware of the falsity of the representations made by PallayPack.

26. In reliance on PallayPack's false and misleading representations, Scantibodies issued the Purchase Order to PallayPack.

27. In further reliance on PallayPack's false and misleading representations, Scantibodies invested substantial resources in the form of its down payment, travel expenses to and man hours in Germany, and products supplied for testing.

28. As a direct and proximate result of the negligent misrepresentations of PallayPack, Scantibodies has been damaged in an amount to be proven at trial but believed to be in excess of \$240,000.00, including lost profits, lost business opportunities and out-of-pocket expenses.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

29. Scantibodies realleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above, as though fully set forth herein.

30. In reliance on PallayPack's representations described in greater detail herein, Scantibodies issued the Purchase Order and paid valuable consideration to PallayPack in the form of Scantibodies' down payment.

31. PallayPack failed to provide the consideration due and owing on its end, namely a Filling and Capping Machine that met the specifications and requirements set forth in the Purchase Order.

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1 32. PallayPack thus received a benefit and was enriched, and has failed to provide the
2 product it agreed to provide to Scantibodies. Under these circumstances, it would be unjust, and
3 against equity and good conscience, for PallayPack to retain all the benefits bestowed upon it by
4 Scantibodies.

FOURTH CLAIM FOR RELIEF

(Unfair Competition)

7 33. Scantibodies realleges and incorporates by reference the allegations contained in
8 paragraphs 1 through 32 above, as though fully set forth herein.

9 34. The actions of PallayPack described herein in providing false and misleading
10 information to Scantibodies as an inducement for Scantibodies to issue the Purchase Order constitutes
11 unlawful, unfair and fraudulent business acts and practices, in violation of California Business &
12 Professions Code §§ 17200, *et seq.* (“UCL”).

13 35. As a direct result of PallayPack's acts of unfair competition under the UCL,
14 Scantibodies has suffered and will continue to suffer harm as described herein. PallayPack should be
15 required to restore to Scantibodies all monies paid by Scantibodies to PallayPack under the Purchase
16 Order.

PRAYER FOR RELIEF

18 WHEREFORE, Scantibodies prays for judgment against PallayPack as follows:

19 1. For compensatory damages, according to proof, with interest thereon as
20 provided by law;

21 2. For consequential and actual damages, according to proof, with interest thereon
22 as provided by law;

3. For its attorneys' fees;

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- 1 4. For costs of suit as provided for by law; and
- 2 5. For such other relief as the Court deems just and proper.

3 DATED: September 14, 2010 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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5 By: Michelle A. Herrera
6 Michelle A. Herrera
7 Attorneys for Plaintiff SCANTIBODIES
8 LABORATORY, INC.
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1 **DEMAND FOR JURY TRIAL**

2 Scantibodies hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil
3 Procedure.

4 DATED: September 14, 2010 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

5
6 By: Michelle A. Herrera
7 Michelle A. Herrera
8 Attorneys for Plaintiff SCANTIBODIES
9 LABORATORY, INC.
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SCANTIBODIES LABORATORY, INC., a California corporation

DEFENDANTS

PALLAYPACK, INC., a Canadian corporation

10 SEP 14 PM 3:10

County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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DEPUTY

m/B

10 CV 1908

MMA RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury— Med: Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	PROPERTY RIGHTS	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/ Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	Transferred from _____	Appeal to District _____
				<input type="checkbox"/> 5 another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
					<input type="checkbox"/> 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:

Complaint for Breach of Contract; Negligent Misrepresentation; Unjust Enrichment; and Unfair Competition

VII. REQUESTED IN COMPLAINT:

<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION	DEMAND \$>240,000.00	CHECK YES only if demanded in complaint:
UNDER F.R.C.P. 23		JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____

DOCKET NUMBER _____

DATE

September 14, 2010

FOR OFFICE USE ONLY

RECEIPT # 18610

AMOUNT \$355

APPLYING IIP

JUDGE

MAG. JUDGE

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SIGNATURE OF ATTORNEY OF RECORD

Michelle A. Herrera

9/14/10 b/w

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS018010
Cashier ID: bhartman
Transaction Date: 09/14/2010
Payer Name: CALEXPRESS

CIVIL FILING FEE

For: SACNITBODIES V PALLAYPACK
Case/Party: D-CAS-3-10-CV-001908-001
Amount: \$350.00

CHECK

Check/Money Order Num: 57569
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.